UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF MISSISSIPPI HATTIESBURG DIVISION

)
JACOB R. SHEMPER, Plaintiff,))
v. BP, PLC., et. al., Defendants.	Case No. 2:10cv138-KS-MTD Oral Argument Requested)
	,)

MOTION OF DEFENDANTS ANADARKO PETROLEUM CORPORATION AND MOEX OFFSHORE 2007 LLC TO DISMISS THE COMPLAINT PURSUANT TO FED R. CIV. P. 12(b)(6)

Defendants Anadarko Petroleum Corporation ("APC") and MOEX Offshore 2007 LLC ("MOEX"), move this Court for an order dismissing all claims against them pursuant to Fed. R. Civ. P. 12(b)(6). Counts I, II, III, IV, and VI of Plaintiff's Complaint, which are all the claims that Plaintiff has brought against APC or MOEX, should be dismissed for the following reasons:

- 1. The Complaint should be dismissed for failure to state a claim upon which relief can be granted because Plaintiff pleads no nonconclusory allegations from which one could plausibly infer that APC or MOEX had actual operational involvement in the Deepwater Horizon drilling operation for which they could be directly liable for any tortious conduct that occurred on board. Furthermore, Plaintiff fails to plead any plausible nonconclusory basis for holding APC and MOEX indirectly liable for the alleged tortious conduct.
- 2. All of Plaintiff's claims against APC and MOEX are barred by the economic loss rule, because Plaintiff fails to allege physical damage to his person or to any property in which he has a proprietary interest.

- 3. Count II fails to state a claim of negligence per se because Plaintiff does not identify any specific statute that has allegedly been violated. Furthermore, even if Plaintiff had identified a particular statute or regulation, Plaintiff's claim should be dismissed because Plaintiff failed to exhaust state administrative remedies.
- 4. Count III fails to state a cognizable claim for private nuisance, because Plaintiff does not allege that he has a real property interest in the "inland waters and inshore fisheries of the coastal zone, Gulf of Mexico and Gulf Coast States."
- 5. Count IV fails to state a cognizable claim for public nuisance, because Plaintiff fails to allege that the harm he has allegedly suffered differs substantially from the harm suffered by the public at large.
- 6. Count VI fails to state a claim for strict liability, because oil and gas operations are not abnormally dangerous activities as a matter of settled Mississippi law.

The forgoing grounds for dismissal are more fully set forth in the supporting memorandum of law, which APC and MOEX have filed concurrently herewith and incorporate here by reference.

WHEREFORE, APC and MOEX respectfully move this Court for entry of an order dismissing all claims against them pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

Dated: July 20, 2010 By: s/Jack L. Wilson

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

THIS, the 20th day of July, 2010.

s/Jack L. Wilson

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